

In the Matter of Merchant Mariner's Document No. Z-278378-D2 and all other Seaman Documents

Issued to: REGINALD BLACK

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

1204

REGINALD BLACK

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By an order dated 7 January 1960, an Examiner of the United States Coast Guard at New York, New York, suspended the Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as a wiper on the United States SS AMERICAN HUNTER under authority of the document above described, on or about 29 November 1959, the Appellant assaulted and battered a member of the crew, Kelly Miller, with a length of steel pipe while the ship was at Antwerp, Belgium.

At the hearing, the Appellant voluntarily elected to act as his own counsel. The Appellant entered a plea of guilty to the charge and specification, but the Examiner changed the plea to a not guilty plea when the Appellant stated that he acted in self-defense.

The Investigating Officer introduced in evidence the testimony of the seaman allegedly assaulted. This was substantiated by unsworn statements made by the Appellant.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order suspending all documents, issued to the Appellant, for a period of nine months outright plus three months on twelve months' probation.

The Appellant's prior record consists of a suspension in 1945 for several offenses including the possession of a weapon and refusal to surrender it.

OPINION

The evidence establishes that the Appellant was knocked down by Miller during a fight in a barroom ashore; the Appellant returned to the barroom after getting a piece of pipe from the ship and struck Miller on the head with it from behind; later, Miller beat the Appellant with his fists when the Appellant put down the

pipe. The wound on Miller's head required stitches and the Appellant was hospitalized for a few days at Antwerp.

The contentions raised on appeal are that Miller was much larger than the Appellant; the latter was not the aggressor; the Appellant received more serious injuries than Miller; and the Examiner found that there was provocation by Miller.

These contentions are without merit. The Appellant's smaller size and anger at having been knocked down did not, to any extent, justify the striking of Miller with the pipe when he was not even aware of the Appellant's presence. At this point, the Appellant undoubtedly was the aggressor. His conduct deserved the order imposed which would have been revocation except for the prior provocation by Miller. The Appellant's injuries, which resulted from retribution by Miller, are not a factor directly involved in this action. For this, disciplinary action was taken by the Coast Guard against Miller's document.

ORDER

The order of the Examiner dated at New York, New York, on 7 January 1960, is AFFIRMED.

J. A. Hirshfield
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 14th day of November 1960.